

Appl. No. : **09/284,421**
Filed : **June 11, 1999**

REMARKS

Claims 89, 92-95, 99, 105, 111, 113, 114, 119, 123, 125, 127 and 128 have been amended by this paper, and Claims 156-158 have been added. Claims 1-88, 100-104 and 132-140 have been previously cancelled, and Claims 101, 106, 109, 124 and 141-155 are cancelled by this paper. Hence, by this paper, Claims 89-99, 105, 107, 108, 110-123, 125-131 and 156-158 are presented for further examination.

Applicant expresses appreciation to the Examiner for her time spent in preparing for and participating in a personal interview with Applicant's counsel on June 28, 2005. A Summary of the Interview is provided herewith on a separate page.

In the Office Action mailed June 3, 2005, the Abstract of the disclosure was objected to because the Examiner indicated that the Abstract from the co-pending PCT Application should be put on a separate sheet. By this paper, Applicant has amended the Application to place the Abstract on a separate sheet.

In the Office Action, Claims 93-99 and 101-131 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. By this paper, Applicant has amended the indicated claims as necessary to overcome the basis for this rejection, as presented in the Office Action. Accordingly, Applicant respectfully requests that the rejection under 35 U.S.C. § 112, second paragraph be withdrawn.

In the Office Action mailed June 3, 2005, claims 89-94, 96-99, 105, 113, 116, 121-127 and 129-131 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gordon (WO 96/09548) in view of Croteau, et al. (US Patent No. 5,700,655, hereinafter "Croteau").

In the Office Action, on page 4, line 21 – page 5, line 2, the Examiner acknowledged that "Gordon fails to teach that the disc has an upper surface and a lower opposed surface with a space therebetween with reaction sites on the lower surface and an opening in the disc for allowing a sample liquid to be introduced into the space by capillary action between the upper and lower surfaces."

Applicant agrees that, among other features which are also not taught, Gordon does not teach or suggest those items pointed out by the Examiner.

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The Examiner cited Croteau as teaching features not taught by Gordon. However, as Applicant noted during the interview with the Examiner, Croteau describes a method for quantification of biological material in a sample, and provides an example of a lubrication plate for use in this process. The reference indicates that Col. 3, lines 6-8:

“The shape of the incubation plate is not relevant, and in preferred embodiments is generally a circular shape (such as that of a Petri dish). Indeed, the incubation plate can be used to take the place of a Petri dish.”

This plate has a lid, which is not described in the specification, which is removed so that sample may be placed on the plate. In particular, Croteau indicates that Col. 5, lines 25, 26 and 28:

“A lid may then be placed on the incubation plate, and that plate held in an incubator for the appropriate length of time ...”

There is no opening in either the surface of the lid or the plate portion Croteau for the introduction of a fluid therethrough into the space between the plate and the lid. There is no need for such an opening, since the lid is removed in order to place fluid onto the plate. Furthermore, the Croteau device has no relationship to a plate assay structure as claimed nor is there any teaching in Croteau of any application of this to such a structure. Thus, even if Croteau provided the teachings necessary to make obvious the invention, as claimed, Applicant submits that there is no suggestion providing an incentive for the combination of the Croteau and Gordon references.

In the interview, as noted in the Interview Summary prepared on form PTOL-413, the Examiner summarized the proposed changes to the claims. In particular, the Examiner summarized proposed claim amendments as including:

“an assay plate structure having at least one opening on one of an upper or lower surface that provides access to a space for the introduction of fluid thereto with the spacing between the surfaces being sufficiently small to facilitate flow of fluid by capillary action. The proposed changes include reciting that the upper and lower surfaces are substantially planar and rigid.”

The Examiner stated that “the proposed amendments to the claims appear to define over the references presently applied to Gordon, Croteau, et al. and Merkh.”

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Since independent Claims 89, 105 and 123, as presented herein, include the limitations set for above, Applicant respectfully submits that these claims define subject matter which is patentable over the art of record for at least the reasons set forth above. Furthermore, since the other pending claims each depend from one of independent Claims 89, 105 or 123, Applicant respectfully submits that these claims also define subject matter which is patentable over the art of record. Accordingly, Applicant respectfully submits that Claims 89-99, 105, 107, 108, 110-123, 125-131 and 156-158 are now in condition for immediate allowance and such prompt allowance of the same is respectfully requested.

CONCLUSION

The Applicant has endeavored to address all of the concerns of the Examiner in view of the recent Office Action directed to the above-identified application. Accordingly, amendments to the claims, the reasons therefor and arguments in support of the patentability of the pending claims are presented above.

Any claim amendments which are not specifically discussed in the above remarks are not made for patentability purposes, and it is believed that the claims would satisfy the statutory requirements for patentability without the entry of such amendments. Rather, these amendments have only been made to increase claim readability, to improve grammar, and to reduce the time and effort required of those in the art to clearly understand the scope of the claim language. Any new claims presented above are of course intended to avoid the prior art, but are not intended as replacements or substitutes for any cancelled claims. They are simply additional specific statements of inventive concepts described in the application as originally filed.

In light of the above amendments and remarks, reconsideration and withdrawal of the outstanding rejections is specifically requested. If the Examiner finds any remaining impediment to the prompt allowance of these claims that could be clarified with a telephone conference, the Examiner is respectfully requested to initiate the same with the undersigned.

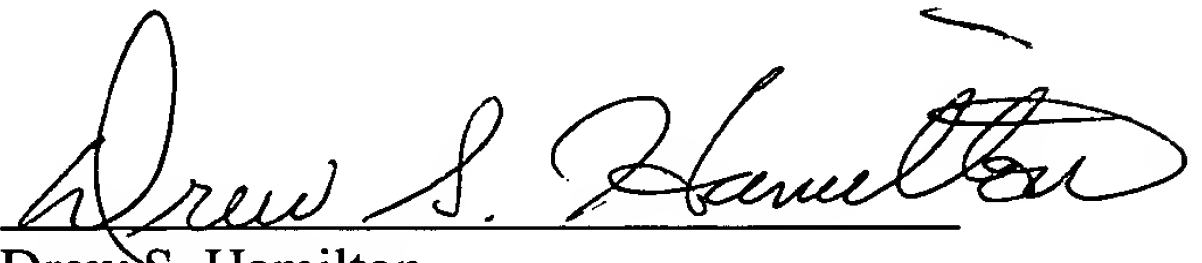
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Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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